



March 26, 1999

ENGROSSED HOUSE BILL No. 1899

DIGEST OF HB 1899 (Updated March 24, 1999 9:53 am - DI 44)

Citations Affected: IC 27-1.

Synopsis: Insurance tax rate reduction. Reduces the insurance premium tax from 2% to 1.3% over a five year phase-in period.

Effective: January 1, 2000.

Harris, Friend

(SENATE SPONSORS — PAUL, ROGERS, BORST, KENLEY)

January 26, 1999, read first time and referred to Committee on Ways and Means.
February 25, 1999, amended, reported — Do Pass.
March 4, 1999, read second time, amended, ordered engrossed.
March 5, 1999, engrossed.
March 8, 1999, read third time, passed. Yeas 57, nays 40.

SENATE ACTION

March 11, 1999, read first time and referred to Committee on Finance.
March 25, 1999, amended, reported favorably — Do Pass.

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EH 1899—LS 8139/DI 58+



March 26, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1899

A BILL FOR AN ACT to amend the Indiana Code concerning insurance and labor.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-1-18-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2000]: Sec. 2. (a) Every
3 insurance company not organized under the laws of this state, and each
4 domestic company electing to be taxed under this section, and doing
5 business within this state shall, on or before March 1 of each year,
6 report to the department, under the oath of the president and secretary,
7 the gross amount of all premiums received by it on policies of
8 insurance covering risks within this state, or in the case of marine or
9 transportation risks, on policies made, written, or renewed within this
10 state during the twelve (12) month period ending on December 31 of
11 the preceding calendar year. From the amount of gross premiums
12 described in this subsection shall be deducted:
13 (1) considerations received for reinsurance of risks within this
14 state from companies authorized to transact an insurance business
15 in this state;
16 (2) the amount of dividends paid or credited to resident insureds,

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or used to reduce current premiums of resident insureds;

(3) the amount of premiums actually returned to residents on account of applications not accepted or on account of policies not delivered; and

(4) the amount of unearned premiums returned on account of the cancellation of policies covering risks within the state.

(b) A domestic company shall be taxed under this section only in each calendar year with respect to which it files a notice of election. The notice of election shall be filed with the insurance commissioner and the commissioner of the department of state revenue on or before November 30 in each year and shall state that the domestic company elects to submit to the tax imposed by this section with respect to the calendar year commencing January 1 next following the filing of the notice. The exemption from license fees, privilege, or other taxes accorded by this section to insurance companies not organized under the laws of this state and doing business within this state which are taxed under this chapter shall be applicable to each domestic company in each calendar year with respect to which it is taxed under this section. In each calendar year with respect to which a domestic company has not elected to be taxed under this section it shall be taxed without regard to this section.

~~(c)(1)~~ (c) For the privilege of doing business in this state, every insurance company required to file the report provided in this section shall pay into the treasury of this state an amount equal to ~~two percent~~ ~~(2%)~~ of the excess, if any, of the gross premiums over the allowable deductions **multiplied by the following rate for the year that the report covers:**

(1) For 1999, two percent (2%).

(2) For 2000, one and nine-tenths percent (1.9%).

(3) For 2001, one and eight-tenths percent (1.8%).

(4) For 2002, one and seven-tenths percent (1.7%).

(5) For 2003, one and five-tenths percent (1.5%).

(6) For 2004 and thereafter, one and three-tenths percent (1.3%).

~~(c)(2)~~ (d) Payments of the tax imposed by this section shall be made on a quarterly estimated basis. The amounts of the quarterly installments shall be computed on the basis of the total estimated tax liability for the current calendar year and the installments shall be due and payable on or before April 15, June 15, September 15, and December 15, of the current calendar year.

~~(c)(3)~~ (e) Any balance due shall be paid in the next succeeding calendar year at the time designated for the filing of the annual report



1 with the department.

2 ~~(c)~~(4) (f) Any overpayment of the estimated tax during the
3 preceding calendar year shall be allowed as a credit against the liability
4 for the first installment of the current calendar year.

5 ~~(c)~~(5) (g) In the event a company subject to taxation under this
6 section fails to make any quarterly payment in an amount equal to at
7 least:

8 (i) (1) twenty-five percent (25%) of the total tax paid during the
9 preceding calendar year; or

10 (ii) (2) twenty per cent (20%) of the actual tax for the current
11 calendar year;

12 the company shall be liable, in addition to the amount due, for interest
13 in the amount of one percent (1%) of the amount due and unpaid for
14 each month or part of a month that the amount due, together with
15 interest, remains unpaid. This interest penalty shall be exclusive of and
16 in addition to any other fee, assessment, or charge made by the
17 department.

18 ~~(d)~~(h) The taxes under this article shall be in lieu of all license fees
19 or privilege or other tax levied or assessed by this state or by any
20 municipality, county, or other political subdivision of this state. No
21 municipality, county, or other political subdivision of this state shall
22 impose any license fee or privilege or other tax upon any insurance
23 company or any of its agents for the privilege of doing an insurance
24 business therein, except the tax authorized by IC 22-12-6-5. However,
25 the taxes authorized under IC 22-12-6-5 shall be credited against the
26 taxes provided under this chapter. This section shall not be construed
27 to prohibit the levy and collection of state, county, or municipal taxes
28 upon real and tangible personal property of such company, or to
29 prohibit the levy of any retaliatory tax, fine, penalty, or fee provided by
30 law. However, all insurance companies, foreign or domestic, paying
31 taxes in this state predicated in part on their premium income from
32 policies sold and premiums received in Indiana, shall have the same
33 rights and privileges from further taxation and shall be given the same
34 credits wherever applicable, as those set out for those companies
35 paying ~~only~~ a tax on premiums as set out in this section.

36 ~~(e)~~(i) Any insurance company failing or refusing, for more than
37 thirty (30) days, to render an accurate account of its premium receipts
38 as provided in this section and pay the tax due thereon shall be subject
39 to a penalty of one hundred dollars (\$100) for each additional day such
40 report and payment shall be delayed, to be recovered in an action in the
41 name of the state of Indiana on the relation of the department of
42 insurance, in any court of competent jurisdiction, and it shall be the



- 1 duty of the department to revoke all authority of such defaulting
- 2 company to do business within this state, or suspend such authority
- 3 during the period of such default, in the discretion of the department.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1899, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning insurance and labor.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1899 as introduced.)

BAUER, Chair

Committee Vote: yeas 16, nays 5.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1899 be amended to read as follows:

Page 71, line 34, after "." insert "**The members' surplus protection principle is intended to restrict the use of members' surplus after the effective date of a plan of reorganization for the benefit of the members of the MIHC. No part of the members' surplus may be used except to conduct the business of insurance in the ordinary course and to expand the business of the MIC in existence as of the effective date of the plan of reorganization. No part of the members' surplus may be used to make payments to stockholders of an intermediate stock holding company or a stock insurance company subsidiary (other than payments in satisfaction of contractual obligations under policies of insurance or annuity contracts held by stockholders) or to pay compensation to employees, directors, or officers of a company except as provided in subsection (d).**".

Page 71, delete lines 41 through 42, begin a new paragraph and insert:

"(c) After the effective date of a reorganization under this article, no part of the members' surplus may be paid or distributed to any person other than to members of the MIHC except as provided in this subsection. A company may use members' surplus to operate after the effective date of a plan of reorganization in the ordinary course of the insurance business; provided, however, that the compensation of employees, directors, or officers of a company from members' surplus (if any) shall include only those amounts that satisfy any one (1) of the following criteria:

- (1) Amounts that are payable with respect to services rendered prior to the effective date of the plan of reorganization.**
- (2) Amounts that are consistent with compensation payable prior to the effective date of the plan of reorganization that would be deemed to be reasonable compensation by the Internal Revenue Service and therefore allowed as proper expense deductions for federal income tax purposes.**
- (3) Amounts that are disclosed to the policyholders in proxy solicitation materials or other written materials approved by the commissioner as part of the notice of the meeting of the members called to approve a plan of reorganization, are approved by the commissioner in principle and concept as part of the approval of the plan of reorganization, and are**



approved by the commissioner as to specific amount prior to payment after the effective date of the plan of reorganization.

(4) Amounts that the commissioner deems necessary to preserve the safety and soundness of the stock insurance company subsidiary by enabling it to engage and retain capable employees.

The “ordinary course of the insurance business” shall include, but not be limited to, expanding the business of any company as of the effective date of a plan of reorganization into other insurance, insurance-related, and financial services businesses. Any expansion of business may be accomplished through acquisition, merger, consolidation, strategic alliance, joint venture, or other business combination. The assets in which the members’ surplus is held may be invested, reinvested, sold, liquidated, exchanged, or otherwise transferred and transformed without regulation other than applicable laws limiting investments of all insurance companies.”.

Page 72, delete lines 1 through 14.

Page 72, line 15, delete "(f)" and insert "(d)".

Page 72, line 15, after "not" insert "approve, ".

Page 72, line 15, after "take" insert ", ".

Page 72, line 18, delete "(g)" and insert "(e)".

Page 72, line 19, delete "having" and insert "have".

Page 72, delete lines 25 through 29.

Page 74, between lines 25 and 26, begin a new paragraph and insert:

"Sec. 15. "Financial services businesses" includes investment banking, commercial banking, industrial banking, savings and loan associations, credit unions, trust companies, other lending and loan brokerage services, services related to the extension of credit (including but not limited to real estate and personal property appraisal; arranging equity financing; check-guaranty services; collection agency services; asset management, servicing, and collection activities; real estate settlement services; and lease financing transactions), securities broker-dealer and trading services, private placement services, acting as a futures commission merchant, securities underwriting, transactions in bullion, precious metals, and foreign currency, investment advisory services, financial planning services, third party administration of insurance policy claims and accounts receivable, the advance or loan of funds using accounts receivable as collateral, organization and operation of investment companies and mutual funds, employee benefit planning and consultation services, actuarial services, issuance of money orders, savings bonds, and traveler's checks, and other



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operations and services either closely related to or a proper incident to the foregoing."

Page 74, line 26, delete "15." and insert "16."

Page 74, line 29, delete ", directly or indirectly,".

Page 74, line 33, delete "16." and insert "17."

Page 74, line 33, delete "refers to" and insert "means".

Page 74, line 35, delete "17." and insert "18."

Page 74, line 40, delete "18." and insert "19."

Page 74, line 40, delete "built-in" and insert "net unrealized capital".

Page 75, line 1, delete "19." and insert "20."

Page 75, line 6, delete "20." and insert "21."

Page 75, line 9, delete "21." and insert "22."

Page 75, line 13, delete "as".

Page 75, line 15, delete "reorganization;" and insert "plan of reorganization, but not to exceed the net unrealized capital gains as of the effective date of the plan of reorganization;".

Page 75, line 21, delete "as".

Page 75, line 23, delete "reorganization;" and insert "plan of reorganization, but not to exceed the net unrealized capital gains as of the effective date of the plan of reorganization;".

Page 75, between lines 24 and 25, begin a new line blocked left and insert:

"For the purposes of this section, "net realized capital gains" means realized capital gains less realized capital losses for the same accounting period. For the purposes of this section, "net unrealized capital gains" means unrealized capital gains less unrealized capital losses as of the effective date of the plan of reorganization."

Page 75, line 25, delete "22." and insert "23."

Page 75, delete lines 30 through 42, begin a new line block indented and insert:

"(2) is a "non-employee Director" as that term is defined by the Securities and Exchange Commission in Rule 16b-3(b)(3)(i) promulgated under the Securities Exchange Act of 1934, as amended."

Page 76, delete lines 1 through 16.

Page 76, line 17, delete "23." and insert "24."

Page 76, line 24, delete "24." and insert "25."

Page 76, line 26, delete "25." and insert "26."

Page 76, line 34, delete "26." and insert "27."

Page 76, line 37, delete "27." and insert "28."

Page 76, line 39, delete "28." and insert "29."



Page 76, line 41, delete "29." and insert "**30.**".

Page 77, line 1, delete "30." and insert "**31.**".

Page 77, line 1, after "means" insert ":".

Page 77, line 1, before "a" begin a new line block indented and insert:

"(1)".

Page 77, line 3, delete "." and insert **"; and**

(2) the policyholders of which may be or are entitled to become members of the MIHC."

Page 77, line 4, delete "31." and insert "**32.**".

Page 77, line 9, delete "32." and insert "**33.**".

Page 77, between lines 32 and 33, begin a new paragraph and insert:

"(c) An application to reorganize as an MIHC may not be filed with the commissioner under this article after June 30, 2001."

Page 77, delete lines 41 through 42, begin a new line block indented and insert:

"(4) The merger, consolidation, or creation of an affiliate relationship (whereby separate corporations are joined under common control) between two (2) or more mutual insurance companies.

(5) The merger, consolidation, or creation of an affiliate relationship (whereby separate corporations are joined under common control) between two (2) or more intermediate stock holding companies as part of the merger, consolidation, or creation of an affiliate relationship (whereby separate corporations are joined under common control) between two (2) or more MIHCs.

(6) The merger, consolidation, or creation of an affiliate relationship (whereby separate corporations are joined under common control) between two (2) or more stock insurance companies.

(7) The merger of an MIC's members' ownership interests into any existing MIHC, with the continued corporate existence of the reorganized MIC as a stock insurance company subsidiary.

(8) The issuance, acquisition, or transfer of capital stock."

Page 78, delete lines 1 through 3.

Page 79, delete lines 7 through 13, begin a new line block indented and insert:

"(4) It must provide that, after the effective date of the reorganization, the MIHC must at all times have the direct or indirect:



(A) power to cast at least fifty-one percent (51%) of the votes on all matters submitted to a vote of the holders of common stock (and each class of stock entitled to vote on any matter submitted to security holders for a vote, including the election of directors) of each reorganized insurer and any intermediate stock holding company of the MIHC; and

(B) ownership of shares of stock entitled to:

(i) receipt of at least fifty-one percent (51%) of all dividends declared on common stock of each reorganized insurer and any intermediate stock holding company of the MIHC; and

(ii) receipt of at least fifty-one percent (51%) of the net proceeds to common stockholders upon any dissolution of each reorganized insurer and any intermediate stock holding company of the MIHC."

Page 79, line 28, delete "lapse or other".

Page 80, line 3, delete "and".

Page 80, between lines 3 and 4, begin a new line double block indented and insert:

"(B) all directors who will qualify as outside directors in accordance with IC 27-14-1-23; and".

Page 80, line 4, delete "(B)" and insert "(C)".

Page 80, line 31, delete "or any stock insurance" and insert ".".

Page 80, delete line 32.

Page 80, line 33, after "policy" insert **"of a stock insurance company"**.

Page 80, line 42, after "policy" insert **"of a stock insurance company"**.

Page 81, line 11, after "policy;" insert **"and"**.

Page 81, line 15, delete "; and" and insert ".".

Page 81, delete lines 16 through 21.

Page 81, line 27, delete "that resulted from the reorganization".

Page 81, line 28, delete "of a domestic MIC".

Page 82, line 11, delete "in Indianapolis" and insert **"under IC 4-22-2-26 in Indianapolis or in the city where the principal office of the applicant is located. The public hearing shall be held"**.

Page 82, delete lines 30 through 38.

Page 83, delete lines 8 through 16, begin a new paragraph and insert:

"Sec. 9. The commissioner shall not approve a plan of reorganization submitted under this article unless the applicant has



shown, by a preponderance of the evidence, that:

- (1) the plan of reorganization:
 - (A) complies with the law;
 - (B) includes the disclosures and notices required under this article;
 - (C) is fair to the members of the MIC; and
 - (D) complies with the members' surplus protection principle; and
- (2) the intended operations of the applicant, as set forth in the plan of reorganization, is fair to the members of the MIC and complies with the members' surplus protection principle."

Page 86, line 39, after "company" insert ", if any".

Page 86, delete lines 41 through 42, begin a new paragraph and insert:

"(b) After the effective date of the reorganization of an MIC as an MIHC under this chapter, the MIHC must at all times have the direct or indirect:

- (1) power to cast at least fifty-one percent (51%) of the votes on all matters submitted to a vote of the holders of common stock (any class of stock entitled to vote generally on matters submitted to security holders for a vote, including the election of directors) of each reorganized insurer and any stock holding company of the MIHC; and
- (2) ownership of shares of stock entitled to:
 - (A) receipt of at least fifty-one percent (51%) of all dividends declared on common stock of each reorganized insurer and any stock holding company of the MIHC; and
 - (B) receipt of at least fifty-one percent (51%) of the net proceeds to common stockholders upon any dissolution of each reorganized insurer and any stock holding company of the MIHC.

Sec. 5. (a) For the purposes of IC 27-1-23:

- (1) an MIHC and its affiliates constitute an insurance holding company system; and
- (2) an MIHC is considered to be an "insurer".

However, a separate filing or an approval is not required under IC 27-1-23 for an acquisition or a reorganization that is included in a plan approved under this article.

(b) For the purposes of this section, a "material transaction" means:

- (1) a transaction described in IC 27-1-23-4(b) between:
 - (A) an MIHC and any affiliate; or



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- (B) between any affiliates of an MIHC;**
if the transaction equals or exceeds the percentages of
admitted assets or surplus set forth in IC 27-1-23-4(b) of any
reorganized insurer of the MIHC; or
- (2) a transaction described in IC 27-1-23-4(b) between an**
MIHC and any person as specified in a rule adopted by the
commissioner under IC 4-22-2 or an order issued by the
commissioner.

(c) An MIHC may not enter into a material transaction unless the MIHC has notified the commissioner in writing of its intention to enter into a material transaction at least thirty (30) days before the transaction, or such shorter period as the commissioner may permit, and the commissioner has not disapproved the transaction within that period.

(d) In addition to the requirements of IC 27-1-23-4(a) and IC 27-1-23-4(d), a material transaction must:

- (1) be fair and reasonable to the members of the MIHC; and**
- (2) not violate the members' surplus protection principle.**

(e) An MIHC and its affiliates may not enter into transactions that are part of a plan or series of like transactions if the purpose of those separate transactions is to circumvent any rules of the commissioner prohibiting a material transaction or this section."

Page 87, delete lines 1 through 11.

Page 87, line 12, after "6." insert "(a)".

Page 87, delete lines 19 through 37, begin a new line block indented and insert:

"(4) Any audit committee or executive committee of the board of directors of:

- (A) an MIHC;**
- (B) an intermediate stock holding company; or**
- (C) a stock insurance company subsidiary.**

(b) All of the directors who are members of any management compensation committee of the following entities must be outside directors:

- (1) An MIHC.**
- (2) An intermediate stock holding company.**
- (3) A stock insurance company subsidiary.**

(c) All of the directors who are members of any pricing committee of the following entities with responsibility for approving the price of stock sold in any offering under this article must be outside directors:

- (1) An intermediate stock holding company.**



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(2) A stock insurance company subsidiary.

(d) The commissioner may determine, after furnishing the affected company and director with notice and opportunity to be heard, that an individual does not qualify as an outside director or otherwise should not be considered an outside director. Such an individual may continue to serve as a director, but from the date the commissioner notifies the affected company in writing of his determination and the basis therefor, the individual may not be considered an outside director.

(e) A director's failure to qualify as or be considered an outside director does not affect the validity of any action taken in good faith by the company, the board of directors, or any committee of the board of directors.

Sec. 7. (a) With the written approval of the commissioner, and subject to any conditions imposed by the commissioner, an MIHC may do any of the following:

(1) Merge or consolidate with, or acquire the assets of:

(A) an MIHC organized under this article; or

(B) a similar entity organized under the laws of any other state.

(b) Subject to approval and filing requirements imposed by IC 27 and other states' laws, an MIHC may do the following:

(1) Acquire the stock of a stock insurance company as a subsidiary of the MIHC or an intermediate stock holding company of the MIHC.

(2) Organize a domestic intermediate stock holding company as a wholly owned subsidiary.

(3) Organize a stock insurance company as a subsidiary.

(4) Acquire the assets or all or any part of the stock of any insurance business, insurance-related business, or business entity engaged in financial services businesses.

(5) Organize or acquire the debt or equity securities of any business entity other than those engaged in insurance or insurance related businesses or in financial services businesses, so long as the MIHC does not control and does not have the right to control the business entity and does not hold more than 10% of the issued and outstanding debt or equity securities of the business entity."

Page 88, line 6, delete "surplus requirements" and insert "**deposit requirement**".

Page 88, line 7, delete "IC 27-1-6-15." and insert "**IC 27-1-6-15(d).**".



Page 88, between lines 11 and 12, begin a new line block indented and insert:

"(4) An MIHC is not subject to the investment requirements under IC 27-1-12 or IC 27-1-13 that limit or restrict investments in subsidiaries.

(5) An MIHC is not subject to risk based capital requirements under IC 27-1-36.

(6) An MIHC is not subject to a requirement under IC 27 if the commissioner determines by order or rule adopted by the commissioner under IC 4-22-2 that the requirement does not apply to the MIHC."

Page 88, line 25, delete "13" and insert "**12**".

Page 88, delete lines 29 through 34.

Page 88, line 35, delete "11." and insert "**10**".

Page 88, line 37, delete "12." and insert "**11**".

Page 89, between lines 8 and 9, begin a new line blocked left and insert:

"To the extent that any company has stockholders other than the MIHC or an intermediate stock holding company, then the fiduciary duties that the officers and directors of the MIHC owe to the members of the MIHC shall be co-extensive with the fiduciary duties owed by the directors of any Indiana corporation to its shareholders."

Page 89, line 13, delete "13." and insert "**12**".

Page 89, delete lines 20 through 23.

Page 89, line 24, delete "(2)" and insert "**(1)**".

Page 89, delete lines 34 through 35.

Page 89, line 36, delete "(4)" and insert "**(2)**".

Page 90, line 8, after "years of" insert "**net income after taxes and net realized gains after the effective date of the plan of reorganization**".

Page 90, delete lines 9 through 15.

Page 90, line 31, after "article" insert "**and with applicable federal and state securities laws**".

Page 93, delete lines 1 through 6.

Page 93, line 7, delete "(7)" and insert "**(6)**".

Page 93, line 15, delete "(8)" and insert "**(7)**".

Page 93, line 38, delete "are".

Page 93, delete line 39.

Page 93, line 40, delete "Code or that".

Page 95, delete lines 28 through 32, begin a new line block indented and insert:

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"may not exceed five percent (5%) of the total number of shares to be issued under the plan, not including:

(A) any shares attributed to the officers and directors and their associates but held by one (1) or more employee benefit plans that satisfy the requirements of Section 401(a), 403(b), 404(c), 408, 423, or 501(c)(9) of the Internal Revenue Code; or

(B) any options or rights to acquire shares pursuant to an employee benefit plan that complies with Section 422 of the Internal Revenue Code."

Page 96, delete lines 11 through 16, begin a new line block indented and insert:

"may not exceed five percent (5%) of the total number of shares of nonvoting equities and other nonvoting dividend paying instruments to be issued under the plan, not including:

(A) any nonvoting equities or instruments attributed to the officers and directors and their associates but held by one (1) or more employee benefit plans that satisfy the requirements of Section 401(a), 403(b), 404(c), 408, 423, or 501(c)(9) of the Internal Revenue Code; or

(B) any options or rights to acquire shares pursuant to an employee benefit plan that complies with Section 422 of the Internal Revenue Code.

(7) An inadvertent ownership of securities that exceeds the securities ownership limitations in this chapter does not violate this chapter if:

(A) a sufficient number of securities are divested within thirty (30) days after the limitation was first known to be exceeded so that the limitation is no longer exceeded; and
(B) during the period when the limitation is known to have been exceeded, the owner of the securities:

(i) does not vote any securities in excess of the limitation; and

(ii) does not accept a dividend in respect of any securities that exceed the limitations.

(8) For purposes of determining compliance with ownership restrictions in this chapter, a person to whom a stock purchase option or warrant has been granted under this chapter is not considered to own the underlying securities until the stock purchase option or warrant is exercised.

(9) An increase in a person's percentage ownership of securities does not constitute a violation of the securities

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ownership restrictions in this chapter if the increase in percentage ownership results solely from a decrease in the aggregate number of securities outstanding; provided, however, that the person must take prompt action to divest the excess number of shares in accordance with subdivision (7).".

Page 96, line 17, delete "(7)" and insert "(10)".

Page 96, line 32, delete "(8)" and insert "(11)".

Page 96, line 36, delete "(9)" and insert "(12)".

Page 97, line 6, after "hearing" insert "**under IC 4-22-2-26**".

Page 97, delete lines 24 through 31.

Page 97, line 32, delete "4." and insert "3.".

Page 97, line 39, delete "5." and insert "4.".

Page 98, line 9, delete "principles" and insert "**principle**".

Page 98, line 10, delete "6." and insert "5.".

Page 98, line 19, delete "7." and insert "6.".

Page 98, line 23, delete "8." and insert "7.".

Page 98, line 27, delete "9." and insert "8.".

Page 99, delete lines 28 through 39, begin a new paragraph and insert:

"Sec. 6. (a) Except as provided in subsection (b), a stock insurance company subsidiary to which insurance policies, contracts, and other assets and obligations are transferred in connection with a plan of reorganization under this article has, with respect to the insurance policies, contracts, and other assets and obligations, all rights, liabilities, and authority of the MIC that is the subject of the plan of reorganization.

(b) An MIHC resulting from a plan of reorganization of an MIC under this article has all obligations and liabilities of the MIC for any claim, asserted or otherwise, that existed at the effective date of the reorganization and that:

- (1) seeks the imposition of a constructive or charitable trust on assets of the MIC for the benefit of policyholders, members, or other persons;**
- (2) seeks distribution or return of assets, or other form of compensation, from the MIC to policyholders or members; or**
- (3) otherwise arises out of, or relates to, the ownership interest of policyholders or members of the MIC, or to the value of their ownership interests, including any claim that challenges a statutory transaction engaged in by the MIC before the effective date of the reorganization."**

Page 100, line 7, delete "claims relating to the ownership" and insert

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"any claim described in section 6(b) of this chapter."

Page 100, delete lines 8 through 10.

Page 100, line 12, delete "holding".

Page 100, line 13, after "MIC." insert **"If an MIHC converts to a stock insurance company under IC 27-1-8-13, the surplus of the MIHC as of the effective date of the conversion must be determined and distributed in accordance with IC 27-1-8-13."**

Page 100, between lines 21 and 22, begin a new paragraph and insert:

"Sec. 10. (a) Except as otherwise specifically provided in this chapter, IC 5-14 applies to all filings made under this article.

(b) Filings, information, and documents made with or provided to the commissioner under this article may include information that might be damaging to a converting mutual or its affiliates if made available to competitors. Subject to subsection (c), all documents containing trade secrets of a converting mutual or its affiliates and marked "confidential" by the converting mutual:

- (1) are declared confidential for purposes of IC 5-14-3-4;**
- (2) are not subject to inspection and copying by the public under IC 5-14-3-3;**
- (3) may be disclosed by the commissioner to the department of insurance of another state if that department of insurance agrees to keep the information confidential; and**
- (4) may not be disclosed by the commissioner to any person other than a department of insurance under subdivision (3) without the written consent of the converting mutual.**

(c) Subject to subsection (e), the commissioner may disclose to any person all or part of any document marked "confidential" in the commissioner's possession as the result of being filed under this article if the following conditions are met:

- (1) The commissioner must give written notice of the proposed disclosure to the converting mutual and any other person requesting disclosure.**
- (2) The converting mutual must be given an opportunity in private to respond to the proposed disclosure.**
- (3) The commissioner must give consideration to any legitimate interest in preserving trade secrets.**
- (4) The commissioner must determine that the eligible members or other policyholders have a compelling interest that would be served by disclosure.**
- (5) At least five (5) business days have elapsed from the converting mutual's receipt of written notice.**



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(d) The commissioner may disclose information under subsection (c) in a manner and subject to limitations as the commissioner considers appropriate.

(e) If:

- (1) not more than six (6) business days have elapsed since the converting mutual received notice of a proposed disclosure; and
- (2) the converting mutual has notified the commissioner that it or another interested party has filed an action seeking a protective order from a circuit or superior court to prevent or to limit disclosure;

the commissioner may not disclose the documents or copies of documents during the pendency of the action and any appeal or after any final court decision prohibiting disclosure.

Sec. 11. (a) An existing domestic MIHC may, with the prior approval of the commissioner:

- (1) acquire direct or indirect ownership of a converting foreign MIC that becomes a stock insurer in compliance with the laws of its state of domicile; and
- (2) grant membership interests and equity rights to the members or policyholders of a foreign mutual insurer that merges with a direct or indirect domestic or foreign subsidiary of the MIHC or is otherwise acquired by the MIHC.

(b) The commissioner shall consider the fairness of the terms and conditions of the transaction, whether the interests of the members of each MIHC that is a party to the transaction are protected in a manner consistent with the members' surplus protection principle, whether the proposed transaction is in the public interest, and whether the transaction complies with the members' surplus protection principle when determining whether to approve a transaction under subsection (a).

Sec. 12. The concurrent reorganization of two (2) or more domestic MICs into a single MIHC structure under IC 27-14-2 may be accomplished by a joint application and a joint plan of reorganization and may be approved by the commissioner following a combined hearing. The commissioner may allow such other procedures as may be necessary or desirable to avoid unnecessary or duplicative costs and efforts in satisfying the requirements of this article and in effectuating the reorganization.

Sec. 13. The commissioner is authorized to adopt rules under IC 4-22-2 to carry out the purposes of this article.



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SECTION 27. [EFFECTIVE UPON PASSAGE] (a) IC 27-14, as added by this act, is intended to enable mutual insurance companies to seek additional capital more effectively to:

- (1) enhance their financial strength and flexibility;
- (2) support long term growth internally and through mergers and acquisitions; and
- (3) expand and enhance the domestic insurance companies of this state.

(b) IC 27-14, as added by this act, provides an alternative organizational structure to help strengthen the Indiana mutual insurance industry by permitting mutual insurance companies to:

- (1) reorganize into a mutual insurance holding company structure; and
- (2) raise capital through the sale of capital stock."

Renumber all SECTIONS consecutively.

(Reference is to HB 1899 as printed February 26, 1999.)

FRY

HOUSE MOTION

Mr. Speaker: I move that House Bill 1899 be amended to read as follows:

Page 5, line 31, delete "TWO" and insert "ONE".

(Reference is to HB 1899 as printed February 26, 1999.)

HARRIS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1899 be amended to read as follows:

Page 1, delete lines 1 through 15.

Page 2, delete lines 1 through 4.

Renumber all SECTIONS consecutively.

(Reference is to HB 1899 as printed February 26, 1999.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred House Bill No. 1899, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 15.

Delete pages 2 through 67.

Page 68, delete lines 1 through 29.

Page 68, line 30, delete "24" and insert "1".

Page 69, delete lines 31 through 36, begin a new line block indented and insert:

"(1) For 1999, two percent (2%).

(2) For 2000, one and nine-tenths percent (1.9%).

(3) For 2001, one and eight-tenths percent (1.8%).

(4) For 2002, one and seven-tenths percent (1.7%).

(5) For 2003, one and five-tenths percent (1.5%).

(6) For 2004 and thereafter, one and three-tenths percent (1.3%)."

Page 71, delete lines 6 through 42.

Delete pages 72 through 106.

and when so amended that said bill do pass.

(Reference is to HB 1899 as reprinted March 5, 1999.)

BORST, Chairperson

Committee Vote: Yeas 10, Nays 5.

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